

ORIGINAL**In the United States Court of Federal Claims**

No. 14-536C
 (Filed: August 5, 2014)
 UNREPORTED

FILED**AUG - 5 2014**

U.S. COURT OF
 FEDERAL CLAIMS

 WILLIAM R. MURPHY,

Plaintiff,

v.

THE UNITED STATES,

 Defendant.

**Pro Se; Motion for reconsideration
 denied**

ORDER DENYING PLAINTIFF'S REQUEST FOR RECONSIDERATION

Pending before the court is pro se plaintiff William R. Murphy's ("Mr. Murphy" or "plaintiff") July 21, 2014 letter requesting reconsideration of the court's prior order of July 16, 2014. In its prior order, the court concluded that it lacked jurisdiction to consider Mr. Murphy's request for a declaration that he should receive a tax-exempt "line of duty" pension from the Office of Personnel Management ("OPM"), which the court understands is responsible for administering Mr. Murphy's federal pension.¹

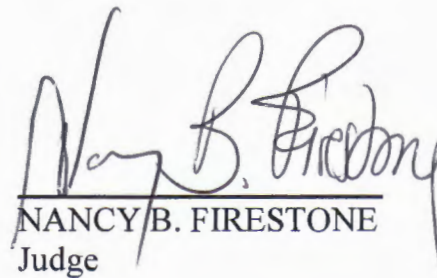
To prevail on a motion for reconsideration under Rule 59(a) of the Rules of the United States Court of Federal Claims ("RCFC"), a movant must identify "a manifest error of law, or mistake of fact." Shapiro v. Sec'y of Health & Human Servs., 105 Fed. Cl. 353, 361 (Fed. Cl. 2012), aff'd, 503 F. App'x 952 (Fed. Cir. 2013). Specifically, the party seeking reconsideration must show "(i) an intervening change in controlling law; (ii) the availability of previously unavailable evidence; or (iii) the necessity of granting the motion to prevent manifest injustice." Petro-Hunt, L.L.C. v. United States, 105 Fed. Cl. 132, 133 (2012).

¹ The court also denied plaintiff's request to proceed in forma pauperis ("IFP") on the grounds that he receives three pensions totaling more than \$60,713 in annual income. Plaintiff's request for reconsideration as to his IFP status is denied. However, the court is waiving the filing fee in connection with his recently filed request for reconsideration.

Plaintiff has not established a proper basis for reconsideration. In its prior order, the court considered whether Mr. Murphy had stated a tax refund claim because his complaint raised concerns over the tax-implications and label that OPM had assigned to his federal annuity. In his request for reconsideration, Mr. Murphy clarifies that he is not raising a claim against the Internal Revenue Service (“IRS”). Rather, Mr. Murphy is seeking a court order declaring that he should be receiving a tax-exempt “line of duty” pension, rather than as an “ordinary” pension that would be subject to additional taxes.

As explained in the court’s prior order, this court lacks jurisdiction (i.e., authority) to award declaratory relief in the absence of a claim for money damages against the federal government. See Nat’l Air Traffic Controllers Ass’n v. United States, 160 F.3d 714, 716-17 (Fed. Cir. 1998)(per curiam). Plaintiff’s claim against OPM is not a claim for money damages. Plaintiff’s request for reconsideration does not, therefore, present the court with any basis for deviating from its prior decision. Thus, Mr. Murphy’s request for reconsideration must be **DENIED**.²

IT IS SO ORDERED.



NANCY B. FIRESTONE
Judge

² Based on a letter from OPM that Mr. Murphy attached to his request for reconsideration, it appears that OPM denied Mr. Murphy’s earlier request to re-categorize the distribution code of his federal retirement pension. On July 30, 2010, the IRS had issued plaintiff a letter stating that plaintiff was entitled to a tax adjustment in 2007 because he was receiving a “line of duty disability” that was tax exempt under I.R.C. § 104. Mr. Murphy provided that letter to OPM in an effort to change the distribution code on his annuity. OPM later denied Mr. Murphy’s request on the ground that “[t]he decision from the IRS . . . pertained to 2007.” OPM stated that it “cannot change the distribution code on [Mr. Murphy’s] disability retirement. It will remain ‘UNKNOWN’.”

Although the court is without authority to grant plaintiff’s request, the court notes that OPM has issued a public document, which is attached to this order, which addresses the tax treatment of certain annuities. This document includes instructions for annuitants who, like Mr. Murphy, may be concerned that their “1099R Taxable amount is listed as ‘Unknown.’” Because OPM does not provide tax advice, the document also encourages annuitants to call the IRS at 1-800-829-1040 to resolve their tax questions.



2013 Tax Frequently Asked Questions

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1. Why did the tax on my annuity change?

Tax tables are set into law by the United States Congress and administered by the IRS. Each year, the new tables are posted on the IRS website in IRS Publication 15¹ and Notice 1036. We are required by law to update your Federal income tax withholding based on the new monthly periodic tax tables and formulas. OPM withholds the required federal taxes according to your marital status and exemptions (dependents) elected. You can change your tax withholding amount at any time. It is a good idea to check the amount of your Federal and State tax withholding each year.

*It is up to **you** to monitor the taxation of your annuity.*

2. How do I get a corrected 1099R?

We can correct or amend your 1099R. OPM does not forward corrections or amendments to the Internal Revenue Service. The corrected or amended form will be mailed to you at the mailing address we have on file. It is your responsibility to forward the corrected or amended 1099R to the Internal Revenue Service with your amended tax return even if you file electronically. You will not be able to view OPM's amendments or corrections on our Services on line website.

¹ If you are looking at the specific tax tables, you want to search for the Single or Married 'Monthly Payroll Period' tables

3. 1099R Taxable amount is listed as 'Unknown'. What does that mean?

If your 1099R Statement Box 2.a for the Taxable Amount is marked 'Unknown', OPM did not calculate the tax-free portion of your annuity.

Some of the most common reasons for not calculating the tax-free portion of your annuity:

- *Your case is a Disability Retirement;*
- *You retired prior to November 19, 1996;*
- *You have Voluntary Contributions;*
- *Apportionment was paid to your former spouse(s);*
- *Your case has not been finalized and you are in Interim pay status;*
- *You have Survivor benefits payable and/or your case is an Office of Workers Compensation case;*
- *You have Alternative Annuity elections*

OPM can not provide tax advice. Please contact the Internal Revenue Service toll free at 1-800-829-1040 to speak with an agent who will provide free tax advice.

4. I am a retiree and I want a refund of my Federal or state tax withholdings?

OPM can refund Federal and/or State income tax withholding **ONLY** for the current year. mailed.

We cannot refund tax withholding for previous tax years. To request a refund of your withholdings for previous tax years, please contact the IRS at 1-800-829-1040 for Federal tax withholding refund and your State Revenue Office for state tax withholding refund.

To request a refund, you can email us at retire@opm.gov or call us at 1-888-767-6738. Remember to provide your CSA/CSF claim number or full SSN. If you want a partial reimbursement, let us know the exact amount (no percentage) AND provide the exact period (for example: 5/10/2012 to 12/31/2012). Normally, the refund is issued as a separate payment. Refund will be issued by electronic direct deposit to the account on file; otherwise, it will be mailed.

If we are not currently withholding State tax, you must call your State Revenue Office for a refund. Find your State Revenue Office here.

5. Why doesn't OPM issue 1099R statements the first week of January, like the private sector does?

The 1099Rs for 2012 will be mailed during the last week of January. We are required by law to make the 1099R available to over 1.9 million annuitants, survivor annuitants, heirs and assignees of deceased annuitants by January 31st of each year. We also upload these

1099Rs to our Services Online website. Remember, that amendments or corrections made by OPM to your 1099R are not automatically forwarded to the IRS. It is your responsibility to forward the updated document to the IRS even if you file electronically.

Go to [Services Online](#) to verify your mailing address.

6. How do I calculate the tax-free portion of my annuity which involves my retirement contributions?

[Select this link to use our online tool to calculate the tax free portion of your annuity](#)

[Read about how the tax-free part of your annuity is determined](#)

7. I retired on disability. How do I calculate the tax-free portion of my annuity?

[Select this link to use our online tool to calculate the tax free portion of your annuity](#)

[Read about how the tax-free part of your annuity is determined](#)

8. How is my annuity taxed if I pay a court-ordered apportionment to a former spouse?

You are taxed on your gross annuity according to your most current W4-P tax marital status election on file. You can change your election at any time. Go to [Services Online](#) or email us at retire@opm.gov.

Your 1099R will reflect a reduction in your gross annuity after your retirement application is finalized based on the amount of apportionment that you pay your former spouse. There will be a footnote on the 1099R stating the amount of the apportionment paid to your former spouse for the year. You are not responsible for paying the Federal tax on the apportionment amount paid to your former spouse (even if the Divorce Decree/Court-order dictates).

Because your annuity is subject to a court ordered apportionment, OPM does not calculate the taxable portion of your annuity. The 1099R will show 'Unknown' in the 2.b 'Taxable Amount' box.

*It is **your** responsibility to make sure enough federal income tax is withheld from your annuity and to check the amount of tax withheld early in the year to be sure you are paying the correct*

You may wish to speak with a representative at the Internal Revenue Service or a tax advisor to help you calculate the tax-free portion of the calculation. Current tax tables for this year are available in Internal Revenue Publication 15. You may view this publication on line by accessing the IRS web site at www.irs.gov. You may also call the IRS toll free for tax advice at: 1-800-829-1040 (agent).

Your former spouse must report the amount of apportionment he/she receives as taxable income and is required to pay taxes on these funds. Apportionment monies cannot be used as alimony deductions on a tax return.

9. I'd like to manage my annuity online. How can I go online and what can I do once I get there?

Services Online is our online tool for annuitants. First, you **must** have a CSA or CSF claim number and a password. If you don't know your CSA or CSF number, or you don't know your password or you haven't accessed your SOL account within the past 15 months,² call us at 1-888-767-6738.

Use your CSA or CSF number and password to login to Services Online. Once online, you can:

- start, change, or stop Federal and State income tax withholdings;
- request a duplicate 1099R;
- print current year and 2 previous years 1099R;
- change your password;
- change your mailing address;
- view your annuity statement;
- start direct deposit or change the account number and/or financial institution;
- establish, change or stop an allotment to an organization.

10. How can I get a password for Services Online?

Services Online is our online tool for annuitants. You will need your CSA or CSF number and a password. If you have misplaced or forgotten your password, there are four ways to request a new one.

Remember to include your CSA or CSF number, your name and date of birth on all correspondence with us.

Online: Go to <https://www.servicesonline.opm.gov> and request a password by email or by mail. Scroll down the page to the **forgot password link** (located in the gray login box). Click on the **forgot password link**. Follow the directions on the **Online Password Request** page. If you select to receive your password by email, you'll receive your temporary password to the email address we have on file for you within 2 days. If you select to receive your password by postal mail, you'll receive your temporary password within 5 to 7 days by postal mail to the mailing address we have on file for you.³

By email: Request a new password by sending an email to retire@opm.gov. Please be sure to include your CSA or CSF number, your first and last name, and mailing address. We will send your temporary password by postal mail to your address on file within 5 to 7 days.

² For your protection, we lock your account after 15 months of inactivity and/or after six failed login attempts. Please call us to unlock your account.

³ If you have been locked out due to 15 months inactivity, a new Password must be mailed. The password cannot be sent by e-mail over the Internet.

By telephone: Request a new password by calling us at 1-888-767-6738 between the hours of 7:15 am to 7:45 pm EST. We will need your CSA or CSF number, your first and last name, and will verify your mailing address. We will send your temporary password by postal mail to your address on file within 5 to 7 days.

By mail: Send us a letter at Office of Personnel Management, PO Box 45, Boyers, PA 16017. Please be sure to include your CSA or CSF number, your first and last name, and mailing address. We will send your temporary password by postal mail to your address on file within 5 to 7 days after we receive your letter.